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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 IN AND FOR THE COUNTY OF LOS ANGELES

11 LOS ANGELES POLICE PROTECTIVE
12 LEAGUE

13 Petitioner,

14 v.

15 CITY OF LOS ANGELES, a municipal
16 corporation; MICHEL R. MOORE, Chief of
17 Police, City of Los Angeles, and DOES 1
18 through 20, inclusive,

18 Respondents,

19
20 ACLU OF SOUTHERN CALIFORNIA AND
21 VALERIE RIVERA; FIRST AMENDMENT
22 COALITION (LOS ANGELES TIMES
23 COMMUNICATIONS LLC (“LA TIMES”),
24 CALIFORNIA NEWSPAPERS PARTNERSHIP
25 L.P. (DOING BUSINESS AS THE SOUTHERN
26 CALIFORNIA NEWSPAPER GROUP
27 (“SCNG”) AND THE BAY AREA NEWS
28 GROUP (“BANG”)), THE CENTER FOR
INVESTIGATIVE REPORTING, INC. (“CIR”),
AND CALIFORNIA NEWS PUBLISHERS
ASSOCIATION (“CNPA”))

Intervenors.

CASE NO. 18STCP03495

[ASSIGNED TO HON. JAMES C. CHALFANT,
DEPT. 85]

**PETITIONER LOS ANGELES POLICE
PROTECTIVE LEAGUE’S OPPOSITION TO
CCP 170.6 PEREMPTORY CHALLENGE TO
JUDGE CHALFANT BY INTERVENORS
FIRST AMENDMENT COALITION (LOS
ANGELES TIMES COMMUNICATIONS LLC
(“LA TIMES”), CALIFORNIA NEWSPAPERS
PARTNERSHIP L.P. (DOING BUSINESS AS
THE SOUTHERN CALIFORNIA
NEWSPAPER GROUP (“SCNG”), BAY AREA
NEWS GROUP (“BANG”)), THE CENTER
FOR INVESTIGATIVE REPORTING, INC.
(“CIR”), AND CALIFORNIA NEWS
PUBLISHERS ASSOCIATION (“CNPA”))**

Petition Filed: December 31, 2018

Hrg. Writ of Mandate: February 5, 2019

1 **I. INTRODUCTION**

2 Petitioner Los Angeles Police Protective League (“LAPPL”) respectfully submits the following
3 Opposition to the C.C.P. 170.6 Peremptory Challenge to Hon. James C. Chalfant by Intervenor’s First
4 Amendment Coalition Los Angeles Times Communications LLC, California Newspapers Partnership
5 L.P., The Bay Area News Group, The Center For Investigative Reporting, Inc., California News
6 Publishers Association (the “Coalition, et al.”). As discussed below, the Peremptory Challenge must be
7 denied as *untimely* because Judge Chalfant already ruled on factual and legal disputes in this matter
8 concerning the merits of the Coalition, et al.’s, Motion to Intervene.

9 Notably, the Intervenor’s Coalition, et al. failed to assert any Peremptory Challenge or otherwise
10 object to Judge Chalfant hearing or ruling on the *ex parte* applications wherein movants asserted merit-
11 based arguments. Judge Chalfant did not rule in favor the Coalition, et al. on two important aspects.

12 First, the Judge denied their request to include a demand for attorney fees against LAPPL.

13 Second, the Judge required that the Coalition, et al., and the ACLU submit one opposition brief,
14 rather than multiple filings.

15 Dissatisfied with the outcome, on January 23, 2019, the Coalition, et al., belatedly filed a 170.6
16 Peremptory Challenge to Judge Chalfant, despite the fact that the Coalition, et al., did not object to
17 Judge Chalfant hearing or ruling on the disputed factual and legal issues raised in their *ex parte*
18 applications to intervene. Therefore Intervenor Coalition, et al., peremptory challenge of Judge
19 Chalfant is improper where they have waived the opportunity to do so.

20 **II. PROCEDURAL HISTORY**

21 At issue in this litigation is whether a newly-enacted statute, known as SB 1421¹ (effective
22 January 1, 2019), should be applied *retroactively* to the release of certain peace officer personnel
23 records that meet new criteria set forth in Penal Code Section 837, subdivision (b)(1), regardless of
24 when those records were created and regardless of when the underlying incidents occurred.

25 LAPPL maintains that retroactive application of SB 1421 will have a substantial impact on the
26 existing statutory and constitutional confidentiality and privacy rights held by police officers

27
28 ¹ See California Senate Bill 1421 (enacted as Chapter 988 of the 2017-2018 Regular Session (“SB
1421”), effective January 1, 2019, and amending Penal Code sections 832.7 and 832.8.

1 throughout the State of California, as protected by the process outlined in Evidence Code Sections
2 1043 and 1045 and codifying *Pitchess v. Super. Ct.* (1974) 11 Cal.3d 531. LAPPL further argues that
3 releasing police officer personnel records by using the four categories of records identified in Penal
4 Code Section 837, subdivision (b)(1), eviscerates the *Pitchess* Motion process that governed the
5 confidentiality of those peace officer personnel records for over the last forty years, prior to the
6 effective date of SB 1421.

7 On December 31, 2018, LAPPL filed a Petition for Writ of Mandate, Alternative Writ and
8 Request for Stay in this case. In addition, LAPPL filed an ex parte application for an Alternative Writ
9 and Stay against the application of any retroactivity of SB 1421. The case was assigned to Judge James
10 C. Chalfant in Department 85 on December 31, 2018.

11 LAPPL's ex parte application was heard on December 31, 2018, and Judge O'Donnell (who
12 was temporarily assigned to hear ex parte applications that day for Department 85) granted an
13 Alternative Writ and Stay Order. The order to show cause on the alternative writ was set for briefing
14 and with a hearing on the Petition scheduled for February 5, 2019.

15 On January 16, 2019, the Coalition, et al., and the ACLU noticed ex parte applications seeking
16 leave to intervene, or in the alternative, for an order shortening time for the hearing and determination
17 of the motion for leave to intervene.

18 The Coalition, et al.'s, ex parte application and moving papers were served on January 17, 2019,
19 and noticed for Department 85. Judge Chalfant held a hearing the next day (on January 18, 2019).
20 LAPPL filed an opposition to the ex parte application. The Coalition, et al., did not file a C.C.P. 170.6
21 peremptory challenge, nor otherwise object to Judge Chalfant hearing or ruling on the ex parte
22 application of Intervenor. The ex parte applications requested that Judge Chalfant make judicial
23 determinations regarding disputed facts and law based on the merits of the motion to intervene.

24 At the January 18, 2019, ex parte hearing, Judge Chalfant *conditionally* granted the Coalition,
25 et al., limited relief, allowing them to intervene, but conditioning his ruling by stating that the
26 Coalition, et al., could not seek recovery of attorney fees against LAPPL, and further, that Coalition, et
27 al., and the ACLU must submit a joint opposition brief to LAPPL's Petition for Writ of Mandate.

1 Dissatisfied with the outcome, on January 23, 2019, the Coalition, et al., filed a 170.6
2 Peremptory Challenge to Judge Chalfant, despite the fact that the Coalition, et al., did not object to
3 Judge Chalfant hearing or ruling on the disputed factual and legal issues raised in their ex parte
4 applications to intervene.

5 **III. ARGUMENT**

6 The Intervenor Coalition, et al.'s Peremptory Challenge must be denied as untimely because
7 Judge Chalfant already has ruled on disputed factual and legal questions regarding intervention,
8 foreclosing the use of challenges under Section 170.6.

9 Section 170.6(a)(2) provides, in pertinent part, as follows:

10 If the motion is directed to a hearing, other than the trial of a cause, the motion shall be
11 made not later than the commencement of the hearing. In the case of trials or hearings not
12 specifically provided for in this paragraph, the procedure specified herein shall be
followed as nearly as possible....

13 An otherwise timely peremptory challenge to a judge must be denied if the judge has presided
14 at an earlier hearing which involved a determination of contested factual or legal issues relating to the
15 merits. (*Johnny W. v. Superior Court* (App. 1 Dist. 2017) 215 Cal.Rptr.3d 372.)

16 Courts have noted that, in cases of late-appearing parties, the potential prejudice of peremptory
17 challenges is especially problematic where the nature and extent of the trial judge's rulings could be
18 well known. "This presents an unusual opportunity to challenge for reasons unrelated to bias or
19 prejudice." (See *Indus. Indem. Co. v. Sup. Ct.* (1989) 214 Cal.App.3d 259, 264.) **Thus, courts hold**
20 **that a "challenge under section 170.6 is not timely after a judge has heard and ruled on contested**
21 **issues of law or fact in an action or proceeding."** (See *Swartzman v. Sup. Ct.*, (1964) 231 Cal.App.2d
22 197, 200.) This applies even to late-appearing parties. (See, e.g, *National Financial Lending, LLC v.*
23 *Sup. Ct.* (2013) 222 Cal.App.4th 262, 270 [trial court's rejection of 170.6 challenge brought by a late-
24 appearing third-party debtor upheld, as "neither side in a proceeding may make a motion under section
25 170.6 after trial has commenced or the trial judge has resolved a disputed issue of fact relating to the
26 merits."].) As a result, no party can challenge a judge who has already ruled on disputed factual or legal
27 issues related to the merits of the case.
28

1 First, the Coalition, et al., prior to its application to intervene was well aware that this case was
2 already assigned to Judge Chalfant in Department 85 and that the Court had granted LAPPL's stay
3 request and set a briefing schedule and a hearing on the Petition for February 5, 2019.

4 Second, both the Coalition, et al., (and the ACLU) submitted memoranda in support of the ex
5 parte application that required Judge Chalfant to rule on disputed issues of fact and law regarding the
6 request to intervene.

7 For example, the Coalition, et al.'s, memorandum raised disputed legal issues, including the
8 balancing of the long-standing, well-established statutory and constitutional confidentiality and privacy
9 rights of police officers, against the Coalition, et al.'s, perceived "strong and direct interest in accessing
10 government records concerning use of force and serious misconduct by law enforcement officers". (See
11 Coalition, et al., ex parte application, Memo. of P's and A's at 9:9-11, 12:14-16, 17:20-18:9.)

12 The Coalition, et al., further argued that Respondents City of Los Angeles and Chief Moore had
13 "little if any direct interest in ensuring that Section 832.7 is construed in a manner consistent with its
14 Legislative purpose. (*Id.*, at 10:1-2.) Notably, the Coalition, et al., conceded that the ex parte
15 application to intervene addresses disputed legal issues, *i.e.*, the issue of any retroactive application on
16 newly-enacted legislation versus the long-standing and well-established statutory and constitutional
17 confidentiality and privacy rights of police officers. (*Id.*, at 10:11-2 ["because the Court's
18 determination regarding Petitioner's requests *directly affect* Intervenor..."].) Finally, the Coalition, et
19 al., admits that its members participated in the official legislative analyses that publicly supported SB
20 1421. (*Id.*, at 12:25-26.)

21 Based on fact that the Intervenor's Coalition, et al.: a.) had knowledge that this case was
22 assigned to Judge Chalfant; b.) noticed the ex parte hearing in Department 85, which is presided by
23 Judge Chalfant; and c.) allowed Judge Chalfant to rule on the merits of the intervention motion,
24 without objection or challenge, the Intervenor's waived the peremptory challenge to Judge Chalfant
25 pursuant to Code of Civil Procedure 170.6.

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1 **IV. CONCLUSION**

2 For the foregoing reasons, Petitioner Los Angeles Police Protective League respectfully
3 requests the Court deny the Intervenors Coalition et al C.C.P 170.6 Peremptory Challenge against
4 Judge Chalfant.

5
6 Dated: January 25, 2019

Respectfully submitted,

7 **RAINS LUCIA STERN**
8 **ST. PHALLE & SILVER, PC**

9 /s/ Richard A. Levine
10 By: Richard A. Levine
11 Attorneys for Petitioner, LOS ANGELES POLICE
12 PROTECTIVE LEAGUE
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PROOF OF SERVICE

I am employed in the City of Santa Monica, State of California. I am over 18 years of age and not a party to this action. My business address is Rains Lucia Stern St. Phalle & Silver, PC, 1428 2nd Street, Suite 200, Santa Monica, CA 90401.

On the date below I served a true copy of the following document(s):

PETITIONER LOS ANGELES POLICE PROTECTIVE LEAGUE'S OPPOSITION TO CCP 170.6 PEREMPTORY CHALLENGE TO JUDGE CHALFANT BY INTERVENORS FIRST AMENDMENT COALITION (LOS ANGELES TIMES COMMUNICATIONS LLC ("LA TIMES"), CALIFORNIA NEWSPAPERS PARTNERSHIP L.P. (DOING BUSINESS AS THE SOUTHERN CALIFORNIA NEWSPAPER GROUP ("SCNG"), BAY AREA NEWS GROUP ("BANG")), THE CENTER FOR INVESTIGATIVE REPORTING, INC. ("CIR"), AND CALIFORNIA NEWS PUBLISHERS ASSOCIATION ("CNPA"))

on the interested parties to said action by the following means:

☒ **(BY MAIL)** By placing a true copy of the above, enclosed in a sealed envelope with appropriate postage, for collection and mailing following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that the correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

☐ **(BY OVERNIGHT DELIVERY)** By placing a true copy of the above, enclosed in a sealed envelope with delivery charges to be billed to Rains Lucia Stern St. Phalle & Silver, P.C., for delivery by an overnight delivery service to the address(es) shown below.

☐ **(BY FACSIMILE TRANSMISSION)** By transmitting a true copy of the above by facsimile transmission from facsimile number (310) 393-1486 to the attorney(s) or party(ies) shown below.

☐ **(BY MESSENGER)** By placing a true copy of the above in a sealed envelope and by giving said envelope to an employee of First Legal for guaranteed, same-day delivery to the address(es) shown below.

☐ **(BY HAND DELIVERY)** By personal delivery of a true copy of the above to the attorneys or parties shown below

☒ **(BY E-MAIL or ELECTRONIC TRANSMISSION)** Based on a court order or an agreement of the parties to accept service by e-mail or electronic transmission, I caused the documents to be sent to the persons at the e-mail addresses listed below. I did not receive, within a reasonable period of time, after the transmission, any electronic message or other indication that the transmission was unsuccessful.

See attached service list

I declare under penalty of perjury under the law of the State of California that the foregoing is true and correct.

DATED: January 25, 2019

/s/ Kelly J. Sims

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